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Legal & Regulatory Group

July 25, 2011

Federal Trade Commission (FTC)
Office of the Secretary
Room-H-113 (Annex N)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Regulatory Review for Alternative Fuels Rule; 16 CFR
Part 309; Matter No. R311002, Program Code M04

Ladies and Gentlemen:

The National Automobile Dealers Association (NADA) represents more than 16,000 franchised automobile and truck dealers who sell new and used motor vehicles and engage in service, repair and parts sales. Together they employ upwards of 1,000,000 people nationwide yet the majority are small businesses as defined by the Small Business Administration.

Last month, the FTC solicited comment on an advanced notice of proposed rulemaking (ANPRM) to amend its labeling requirements for alternative fuels and alternative fueled vehicles (AFVs). 76 Fed. Reg. 31313, et seq. (June 1, 2011). Among other things, the ANPRM discusses whether to merge the new vehicle AFV label with the fuel economy labels required by the National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency (EPA). The ANPRM also addresses used vehicle labels. NADA member dealers sell new and used vehicles subject to the FTC's AFV labeling requirements.

I. Background

The Energy Policy Act of 1992 required the FTC to issue rules governing the labeling of alternative fuel dispensing systems and AFVs. 42 USC§ 13232(a)¹; 16 CFR Part 309. These

¹ (a) **Establishment of requirements**

The FTC, in consultation with the Secretary, the Administrator of the EPA, and the Secretary of Transportation, shall... issue a notice of proposed rulemaking for a rule to establish uniform labeling requirements, to the greatest extent practicable, for alternative fuels and alternative fueled vehicles, including requirements for appropriate information with respect to costs and benefits, so as to reasonably enable the consumer to make choices and comparisons. Required labeling under the rule shall be simple and, where appropriate, consolidated with other labels providing information to the consumer. In formulating the rule, the FTC shall give consideration to the problems associated with developing and publishing useful and timely cost and benefit information, taking into account lead time, costs, the frequency of changes in costs and benefits that may occur, and other relevant factors. The FTC shall obtain the views of affected industries, consumer organizations, Federal and State agencies, and others in formulating the rule....Such rule shall be updated periodically to reflect the most recent available information.

rules were first issued in 1995 and were later amended in 2004. 60 Fed. Reg. 26926, *et seq.* (May 19, 1995); 69 Fed. Reg. 55332, *et seq.* (September 14, 2004). The Energy Policy Act requires these rules to be reviewed and updated periodically. The review initiated by this ANPRM is particularly timely given recent vehicle labeling and alternative fuel developments. Just today, EPA published regulations designed to mitigate the misfueling of vehicles and engines with gasohol containing greater than ten volume percent ethanol. 76 Fed. Reg. 44406, *et seq.* (July 25, 2011). And earlier this month, NHTSA and EPA jointly published rules governing the fuel economy labeling of light- and medium-duty passenger cars and light-duty trucks, , pursuant to Section 105 of the Energy Independence and Security Act of 2007 (EISA), 76 Fed. Reg. 39478, *et seq.* (July 6, 2011).

II. Alternative Fueled Vehicles (AFVs)

The FTC has wisely chosen to accelerate its Part 309 rule review in light of the new NHTSA/EPA fuel economy labeling rules and the extensive information they require for alternative fuels and AFVs. In its comments on the NHTSA/EPA proposal, NADA stressed the importance of harmonization, urging the agencies to adequately incorporate information required by the FTC rule, thereby eliminating any need for it. Based on the language in EISA pertaining to AFVs, NADA suggested that repeal of the FTC rule would be an appropriate and legally justifiable outcome. NADA has pushed consistently for a single consolidated label, dating back to its 1994 comments on the original FTC regulatory proposal and its 2003 comments on proposed revisions to Part 309.

The final NHTSA/EPA regulations incorporate every key requirement for AFVs set out in the FTC rule. Effective with model year (MY) 2013, separate FTC labels should no longer be necessary. Thus, the FTC should repeal its AFV label rule or, if deemed necessary to satisfy the Energy Policy Act, should incorporate the NHTSA/EPA rule by reference. Either approach would comport with the President's July 11, 2011, Executive Order governing the repeal or modification of unnecessary regulations by independent agencies. As a practical matter, there is no continuing need for the FTC rule since the consumer benefits it offers are subsumed by the new NHTSA/EPA rule. Moreover, eliminating Part 309 as applied to AFVs will streamline compliance by vehicle manufacturers tasked with labeling AFVs, and by dealers tasked with maintaining labels until those AFVs are delivered. Importantly, requiring separate FTC labels for MY2013 and beyond will serve only to confuse prospective purchasers.

It appears that the new NHTSA/EPA fuel economy labels will adequately address the hydrogen fuel cell, advanced lean burn, and hybrid vehicles referred to in the 2008 National Defense Authorization Act. Yet if and to the extent they do not, the appropriate course of action would be for the FTC to work with NHTSA and EPA to make sure they do. In no event should separate and essentially redundant FTC labels be required.

The Energy Policy Act nowhere requires the FTC to mandate labels for used vehicles. 16 CFR §309.21. Elimination of the used vehicle mandate in Part 309 applicable to AFVs is justified for the following reasons:

1. AFV information in NHTSA/EPA labels effective with MY 2013 also will be available on the www.fueleconomy.gov website. Dealers readily make information from this site available to prospective purchasers. Note that in 1995 when the FTC decided to require used vehicle AFV labels, www.fueleconomy.gov and other comparative vehicle information websites did not exist.
2. Any value to prospective purchasers associated with the FTC's "generalized" used vehicle AFV labels is more than outweighed by the costs and burdens imposed on dealers tasked with purchasing, installing, and maintaining such labels, especially given that, as noted above, model-specific information is available on www.fueleconomy.gov.
3. Used vehicle dealers, including franchised dealerships, are involved in only about half of all transactions involving used vehicles potentially subject to the FTC rule. Thus, the used AFV label mandate imposes burdens and costs on dealers that arguably puts them in an unfair competitive position with respect to private sellers.

While NADA strongly supports totally eliminating the used vehicle label mandate, alternatively, the FTC could revise its used car rule label by adding a sentence reading: "For more information on the fuel economy and fuel type for this vehicle, consult www.fueleconomy.gov."

III. Alternative Fuels

Another FTC rule governs the labeling of liquid fuel dispensers, including such alternatives to gasoline and diesel as ethanol, gasohol, biodiesel, and liquefied natural gas. 16 CFR Part 306. First issued in 1976, the rule on Automotive Fuel Ratings, Certification and Posting is authorized by the Petroleum Marketing Practices Act (PMPA) and the EISA. 15 USC §2822; 42 USC §17021.

As part of this review, the FTC should consider transferring provisions in Part 309 applicable to fuel dispensing to the Part 306 rule. A single rule governing motor vehicle fuel ratings and labeling is justified since while gasoline and diesel will continue to be the dominant motor fuels for the foreseeable future, vehicles increasingly are being designed and marketed to use a variety of "alternatives." A single rule governing all motor vehicle fuels will simplify compliance for the regulated community and provide the motoring public with the best information. Importantly, the statutory provisions related to the two existing rules do not appear to constrain the FTC's ability to issue a single, harmonized rule governing motor vehicle fuels.

Earlier this year, the FTC amended its automotive fuel ratings, certification and posting rule, primarily regarding octane ratings and biodiesel. 76 Fed. Reg. 19684-92 (April 8, 2011). At the time, the promulgation of provisions on ethanol/gasohol was deferred pending EPA's deliberations on related issues. 76 Fed. Reg. 19684, 19685. With today's publication of an EPA rule on ethanol/gasohol pump labeling, the FTC should resume its work on the matter.

EPA's new rule highlights its efforts to coordinate with the FTC and the EPA appears to have largely adopted the FTC's labeling scheme along with numerous suggestions made by FTC staff. To close the loop, the FTC should complete its work on labels for mid-level gasohol

Federal Trade Commission (FTC)
Office of the Secretary
July 25, 2011
Page 4

blends. In that regard, NADA supports appropriate potential damage warnings and references to vehicle owners' manuals.

II. Fuel Economy Advertising

On the day it issued the ANPRM, the FTC also issued a notice deferring completion of a rulemaking to amend its guide on new vehicle fuel economy advertising. 76 Fed. Reg. 31467-8 (June 1, 2011). As mentioned above, NHTSA and EPA have finalized their joint rules on fuel economy labeling. Thus, the FTC should resume its 2009 fuel economy advertising rulemaking by issuing a supplemental notice of proposed rulemaking designed to take into account and harmonize with the NHTSA EPA final rule.

On behalf of NADA, I thank the FTC for the opportunity to comment on this matter.

Respectfully submitted,

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